

1 [REDACTED] - 2/16/2022
2 identified those factors, I needed to collect data
3 that pertained to those -- to those factors, so I,
4 you know, spent time collecting a variety of data
5 across a variety of different types of sources.
6 Some of those are written communications, some of
7 those are communications in other formats, such as
8 interviews and speeches.

9 And then, you know, other important data
10 that related to those -- to the design of the
11 blockchain and how those factors, you know, were
12 addressed as to collect, you know, data on the usage
13 of the, you know, main product offering, which in
14 this case is ODL.

15 And then, you know, also throughout my
16 original report and then the other reports, you
17 know, an understanding of the mechanics of the
18 blockchain was important. So that involved both
19 looking at blockchain data, as well as reading kind
20 of how the blockchain worked to understand, again,
21 elements of the design of the software products that
22 were offered, and the design of the blockchain
23 itself.

24 So having determined the important
25 factors that are at play and then having, you know,

1 [REDACTED] - 2/16/2022
2 collected the data that I think was important that
3 related to those factors, then the last half, you
4 know, of my methodology was to -- using my kind of
5 background in the space and expertise to synthesize
6 an understanding of what the data suggested about
7 people's -- you know, reasonable purchaser's
8 expectations related to those, you know, key factors
9 that identified.

10 Q. So your methodology depends, in part, on
11 your own personal knowledge of the digital asset
12 space based on your experience trading digital
13 assets, using blockchains and blockchain assets, and
14 your experience in the traditional financial
15 markets. Is that right?

16 A. I think I listed some other things there
17 that comprise my background area and expertise, but,
18 certainly, the things you mentioned are part of
19 that. I mean, my -- my experience trading digital
20 assets -- both digital assets and traditional
21 financial assets and using blockchains and
22 blockchain assets, certainly part of that
23 experience.

24 Q. So nobody else would be able to replicate
25 your methodology unless they were able to get all of

1 [REDACTED] - 2/16/2022

2 the knowledge and experience that you already have
3 relevant to this field. Is that right?

4 MR. SYLVESTER: Objection; form.

5 A. I'm not making any claim about me being
6 the only person that can -- can do that. I think --
7 all I'm suggesting is that I have significant
8 experience in the space and that I use that
9 experience to identify important factors that
10 reasonable purchasers look towards.

11 Q. Right. And nobody else would be able to
12 use your experience to be able to conduct this
13 analysis. Right?

14 A. I think --

15 MR. SYLVESTER: Objection; form.

16 A. -- other people that have similar types
17 of experience can bring that experience to bear. So
18 when you say my experience, I'm not sure exactly
19 what you're asking, but you know, nobody's had the
20 specific combination of experiences that I've had.
21 But other people have had similar experiences.
22 There are other people who are very knowledgeable
23 about the blockchain space. There are other people
24 who have participated as users and investors in the
25 blockchain space.

1 [REDACTED] - 2/16/2022

2 And, you know, I think that there is a
3 commonality in the type of factors that many market
4 participants would look towards in the blockchain
5 space just because, kind of, over time in that
6 space, there is a -- there is a general kind of idea
7 of the type of things that companies speak about
8 because I know there is a set of factors that
9 purchasers look towards in making their decisions.

10 And they -- they know that they need to
11 communicate information about those and I think
12 that's why, in fact, companies do communicate
13 information about those -- those factors, because
14 they know that a reasonable purchaser will look
15 towards those and rely on those communications to
16 understand the -- whether they're from an investment
17 perspective where they're trying to understand the
18 risk/reward of owning that asset or from a usage
19 perspective where they're trying to understand the
20 utility of that purchase for themselves or -- or
21 the, you know -- the pros and cons of using that
22 solution versus another blockchain or another
23 blockchain asset.

24 Q. Have you had the opportunity to review
25 the rebuttal report of Dr. Kristina Shampanier?

1 [REDACTED] - 2/16/2022

2 A. Yes.

3 Q. Do you have any response to the points
4 that Dr. Shampanier raised in her rebuttal report?

5 MR. SYLVESTER: Objection; beyond the
6 scope.

7 A. I need to look at the report. I haven't
8 read it in quite a while to -- to look at something,
9 you know, specific from -- from there.

10 Q. So sitting here today, nothing comes to
11 mind as a response to the points that Dr. Shampanier
12 raised. Is that right?

13 MR. SYLVESTER: Objection --

14 A. I --

15 MR. SYLVESTER: -- mischaracterizes
16 his testimony.

17 Go ahead.

18 A. Sorry. I'm happy to take a look at the
19 report and look at a specific point in that expert
20 rebuttal and we can talk about it. But in general,
21 I don't know what to -- what you're asking me about.

22 Q. Dr. Shampanier critiqued your report as
23 offering a survey of one. Do you recall seeing that
24 in her rebuttal opinion?

25 MR. SYLVESTER: Objection. He just

240

1 [REDACTED] - 2/16/2022

2 said he hasn't read the report in a long time and
3 would need to see the report to reference it. So if
4 you want to ask him a question about what she said,
5 I think it's appropriate to put the report in front
6 of him.

7 MR. OPPENHEIMER: Yeah. I'm just
8 asking if he recalls that point from the report.

9 (Simultaneous speaking.)

10 A. I would need to look at the report.

11 Sorry. Go ahead.

12 Q. Do you recall that point from her report?

13 A. To speak to something specific in the
14 report, I really need to look at it. I mean, you're
15 telling me that there is a sentence in that report,
16 but before commenting on it, I would really like to
17 see the specific wording there.

18 Q. Okay. Have you billed any time in this
19 engagement for review and analysis of
20 Dr. Shampanier's report?

21 A. I've reviewed the report --

22 MR. SYLVESTER: Sorry. Hold on.

23 Objection; form.

24 Go ahead.

25 A. I've reviewed the report and I've billed

1 [REDACTED] - 2/16/2022

2 time for anything I'm doing on this matter, so it
3 stands to reason that I've billed hours for that,
4 yes.

5 Q. Approximately, how many hours have you
6 billed for your review of Dr. Shampanier's report?

7 A. I don't know.

8 Q. Do you think it's more than ten?

9 A. I really don't know.

10 Q. Okay. Take a look at Exhibit 1,
11 Paragraph 85 of your report. Paragraph 85, you
12 write: Investment-oriented purchasers of digital
13 assets often pay close attention to company
14 communications related to the factors described
15 above. Ripple's extensive public comments and
16 reports about those topics likely served to inform
17 and persuade investment-oriented purchasers about
18 the potential reward of purchasing XRP for the
19 purpose of generating a profit.

20 MR. SYLVESTER: Just for the record,
21 you read "those." It's "these topics."

22 MR. OPPENHEIMER: Thank you.

23 Q. Do you see that passage that I just read,
24 subject to the correction?

25 A. Yes.

242

1 [REDACTED] - 2/16/2022

2 Q. Did you do anything to test whether
3 actual purchasers of XRP had the reactions that you
4 suggest in this passage that we just read?

5 MR. SYLVESTER: Object to the form.

6 A. I didn't specifically ask about the
7 reaction of an individual purchaser to these -- to
8 these factors. I -- again, you know, I identified
9 the factors I thought were important to digital
10 asset purchasers and how asset purchasers generally
11 would -- you know, how those relate to the
12 understanding of asset purchasers. But I didn't do
13 a specific, you know, session with a specific
14 purchaser about their reaction to the statements.

15 Q. Prior to your retention as an expert in
16 this case, did you pay close attention to Ripple's
17 public communications in deciding not to purchase
18 XRP?

19 MR. SYLVESTER: Objection; form.

20 Go ahead.

21 A. I, as with any digital asset, generally
22 paid attention to what was out there in the world
23 about that asset. I read news, read information
24 about it in making the determination whether I
25 thought it was a good risk/reward.

1 [REDACTED] - 2/16/2022

2 Q. And did you look at the statements by
3 Ripple cited in your expert report when you were
4 deciding not to purchase XRP?

5 MR. SYLVESTER: Objection; form.

6 Go ahead.

7 A. I read many of the statements in this
8 report and that generally -- all those statements,
9 yeah, generally informed my opinion about whether to
10 invest in a particular asset or not.

11 Q. Did you read all of the statements by
12 Ripple from this report at the time you decided not
13 to -- to purchase XRP?

14 A. I can't remember, sitting here right now,
15 whether every single one of these statements is
16 something that I saw at a specific date.

17 Q. What conclusions did you reach about the
18 potential reward of purchasing XRP for the purpose
19 of generating a profit at the time you decided not
20 to buy it?

21 A. Sorry. Say that again.

22 Q. What conclusions did you reach about the
23 potential reward of purchasing XRP for the purpose
24 of generating a profit at the time you decided not
25 to buy XRP?

1 [REDACTED] - 2/16/2022

2 A. Well --

3 MR. SYLVESTER: Objection;

4 foundation.

5 Go ahead.

6 A. -- since I didn't purchase XRP, I never
7 made a determination that the risk/reward was
8 favorable, at least compared to the kind of
9 opportunities set in front of me of the other
10 potential assets that I could purchase.

11 Q. Have you ever worked for a money
12 transmitter?

13 MR. SYLVESTER: Objection; form.

14 A. No, I have not.

15 Q. Have you ever interviewed anyone who
16 works for a money transmitter?

17 A. As part of this expert report, I saw
18 testimony of employees at -- or maybe at least one
19 employee at a money transmitter. I've also read,
20 you know, financial statements, filings -- public
21 filings, and press releases and other communications
22 by money transmitters.

23 Q. Have you ever interviewed anyone who
24 works for a money transmitter?

25 A. I have not.

1 [REDACTED] - 2/16/2022

2 Q. Take a look at Paragraph 86 of the
3 report. You write in Paragraph 86: Purchasers of
4 XRP for cross-border payments would also be
5 interested in some of these topics, but not all.
6 For example, a money transmitter likely cares deeply
7 about specific topics like the liquidity of the
8 digital asset trading platforms it needs to rely on
9 to complete an ODL transaction, but is less
10 interested in Ripple's communications about the bull
11 case for the price of XRP.

12 What expertise do you have to identify
13 what money transmitters were likely to care deeply
14 about?

15 A. As I said, I read, you know, many
16 statements by money transmitters about the type of
17 issues they care about, about their business model,
18 about their business strategy. In addition, you
19 know, read their -- details about their finances.
20 So, you know, through that information, I came to an
21 understanding about what issues were important to
22 them in terms of the platforms they use.

23 I think in the specific example, the
24 sentence we just read, you know, employees for
25 MoneyGram were very direct about addressing these

1 [REDACTED] - 2/16/2022

2 topics.

3 Q. So your basis for deciding what a money
4 transmitter would likely care about comes from
5 public filings and statements by MoneyGram. Is that
6 right?

7 A. I've read and studied the business models
8 and business strategy of many companies in the -- in
9 the financial -- institutional financial space.
10 MoneyGram is one example, I think it's a
11 particularly important example because, you know,
12 MoneyGram, at the peak of ODL uses during the
13 issuance period, MoneyGram made roughly 95 percent
14 of those ODL transactions. So when the, you know,
15 CFO or somebody who's important at MoneyGram makes,
16 you know, specific statements about what aspects of
17 the market are important to them, when they say
18 something like, you know, talking about liquidity
19 and talking about their holding periods of XRP,
20 whether they view it as a long-term investment, when
21 they talk about those things, you know, they're a
22 main customer of ODL, that's a particularly
23 important voice.

24 But, you know, in general, I've paid
25 attention to many companies that are in -- involved

1 [REDACTED] - 2/16/2022

2 in, you know, financial business world.

3 Q. Do you have any special knowledge in this
4 field that someone else who paid close attention to
5 the business -- withdrawn.

6 Do you have any special knowledge in this
7 field that someone else who paid close attention to
8 businesses in the financial business world and who
9 read the materials from MoneyGram that you've cited
10 in your report would not have?

11 MR. SYLVESTER: Object to form.

12 A. Sorry that was -- can you repeat that?

13 I'm confused exactly what you're asking me.

14 Q. Do you have any basis to opine on what
15 was important to a money transmitter other than
16 publicly available materials and the comments by
17 MoneyGram in this case?

18 MR. SYLVESTER: Objection;
19 mischaracterizes his testimony.

20 A. The statements specific to MoneyGram that
21 I just talked about and how a money transmitter such
22 as MoneyGram would -- you know, like the type of
23 factors that are important to them, I think that's
24 discussed at length in my report.

25 As you asked earlier, I didn't have a

1 [REDACTED] - 2/16/2022
2 specific one-on-one conversation with a MoneyGram
3 employee about that, but they've certainly, through
4 various forms, made their opinions very clear and --
5 and talked about the things that are working for
6 them and not working for them in terms of using this
7 product and so, as laid out in the report, I've
8 relied on -- on those indicators.

9 Q. And, again, those indicators are public
10 sources and statements by MoneyGram in this
11 litigation. Right?

12 MR. SYLVESTER: Objection.

13 Go ahead.

14 A. Yeah. As I described, you know,
15 MoneyGram in particular is an important voice
16 because they're 95 percent of the usage of ODL
17 during the peak usage period of the period that I
18 was looking at. So, you know, their statements were
19 important indicators to me, I certainly included
20 those when I saw them.

21 Q. And you never worked for MoneyGram?

22 A. That's correct.

23 Q. You never worked for Western Union?

24 A. Correct.

25 Q. You never considered any statements by

1 [REDACTED] - 2/16/2022

2 Western Union in forming that opinion, did you?

3 A. I didn't see statements from Western
4 Union.

5 Q. Did you ask to see statements from
6 Western Union?

7 A. I don't remember asking for specific data
8 from Western Union.

9 Q. Were you aware that Western Union
10 produced documents to the SEC in this case?

11 MR. SYLVESTER: Objection. I'm going
12 to ask you -- instruct you not to answer that to the
13 extent that it reveals conversations with counsel.
14 If you can answer without revealing conversations
15 with counsel, you can answer.

16 A. I don't remember.

17 Q. Take a look at Paragraph 50 of your
18 report. It's on Page 26 of Exhibit 1. In
19 Paragraph 50, you write: Based on my experience as
20 an investor in digital assets as well as my close
21 observation of the digital asset space, I believe
22 that a reasonable investment-oriented purchaser of
23 XRP would consider at least the following factors
24 when purchasing XRP.

25 And then you set out a list of six

250

1 [REDACTED] - 2/16/2022

2 factors. Do you see that?

3 A. Yes.

4 Q. Now, there's no citation in the footnote
5 there, is there?

6 MR. SYLVESTER: Sorry, Brad. What
7 footnote?

8 MR. OPPENHEIMER: Footnote 48.

9 Q. At the end of that sentence, there's no
10 citation to any source for this?

11 MR. SYLVESTER: Object; form.

12 A. I'm sorry. I just read the footnote.
13 What were you asking me about it?

14 Q. You didn't provide a citation for the
15 list of the six factors in Paragraph 50. Right?

16 A. Correct.

17 Q. You drew that list based on your own
18 personal experience. Is that right?

19 A. I --

20 MR. SYLVESTER: Objection;
21 mischaracterizations his testimony.

22 Go ahead.

23 A. The factors in this paragraph as well as
24 other parts of the report that I've identified as
25 important factors to a reasonable purchaser that

1 [REDACTED] - 2/16/2022

2 was -- those are important factors I identified
3 based on my knowledge and experience of watching the
4 space.

5 Q. You didn't cite any academic papers
6 setting out those factors as important, did you?

7 A. Correct.

8 Q. You didn't cite any industry journals or
9 other business articles identifying those factors.

10 Right?

11 MR. SYLVESTER: Objection; form. You
12 just got to give me a second.

13 THE WITNESS: Sorry.

14 THE REPORTER: What was your answer?
15 I didn't hear it.

16 THE WITNESS: "Correct."

17 Q. You don't cite any books or websites or
18 other publications that list those six factors.

19 Right?

20 MR. SYLVESTER: Objection; form.

21 A. Correct.

22 Q. Do you believe that digital asset buyers
23 in the context of an ICO, initial coin offering,
24 consider different factors than digital asset buyers
25 outside of an ICO?

1 [REDACTED] - 2/16/2022

2 MR. SYLVESTER: Objection; form, and
3 beyond the scope.

4 A. In putting together this report, I put
5 together the, you know, based on my knowledge and
6 experience, the factors that I thought were
7 important to a potential purchaser of XRP. I think
8 that was my assignment. You're asking about
9 something that I haven't, you know, had the time to
10 think about or put that together.

11 Q. So sitting here today you haven't thought
12 about whether ICO purchasers have different factors
13 that they would consider than non-ICO purchasers?

14 MR. SYLVESTER: Objection; form,
15 beyond the scope.

16 A. That -- it's not that I haven't
17 considered ICOs in addition to a wide variety of
18 other digital assets. You know, sitting here right
19 now and preparing this report that wasn't part of
20 what I was asked to consider.

21 Q. And just to be clear you're not opining
22 that Ripple held an ICO from 2013 to 2020, are you?

23 A. I've never made a kind of legal
24 determination about, you know, specific terms that
25 you would classify their -- their issuance of XRP or

1 [REDACTED] - 2/16/2022

2 their offering. You know, some projects have
3 self-labeled in certain ways and some have not, but
4 my assignment was not to make that kind of
5 determination.

6 Q. So you're not offering an opinion about
7 whether Ripple held an ICO from 2013 to 2020, are
8 you?

9 A. I'm not offering an opinion on what --
10 what they -- what you would call or label their
11 issuance.

12 Q. Your report uses the term
13 "investment-oriented purchaser of XRP" in several
14 places. How do you define an investment-oriented
15 purchaser?

16 A. I think, in general, throughout the
17 report I talk about investment-oriented purchasers
18 and utility-oriented purchasers. Those aren't
19 mutually exclusive categories. Somebody can be
20 investment and utility-oriented purchaser. It's
21 just a reflection of the idea that different types
22 of reasonable purchasers have different goals in
23 mind and some of those are to use services on the
24 blockchain, to use software products, to use
25 blockchain solutions.

1 [REDACTED] - 2/16/2022

2 Some of the goals include, you know,
3 speculative profits, short-term profits, long-term
4 profits, like a lot of the different types of
5 strategies that we talked about today with regard to
6 my own activity and experience in the space. And,
7 you know, those -- those two different types of
8 goals can overlap or not on a particular person.

9 Q. So how do you define an
10 investment-oriented purchaser?

11 A. That's a purchaser who is interested in
12 earning investment gains off of the activity
13 surrounding, you know, purchasing and selling
14 digital assets.

15 Q. Are there any other categories of actual
16 or potential purchasers of XRP other than
17 investment-oriented and utility-oriented?

18 MR. SYLVESTER: Objection; form.

19 A. Sitting here now, it's not something --
20 you know, I'd have to think carefully about how to
21 categorize, you know, each and every possible use
22 and whether it fits into one of those two buckets or
23 not. I think, generally, those are the -- the broad
24 categories that purchasing activity falls under.

25 (Discussion off the written record.)

1 [REDACTED] - 2/16/2022

2 MR. OPPENHEIMER: Why don't we go off
3 the record here?

4 THE VIDEOGRAPHER: The time is 4:44.
5 We're off the record.

6 (Break.)

7 THE VIDEOGRAPHER: The time is 5:02.
8 We are on the record.

9 Q. A little bit before the break, I had
10 asked you whether you looked at the statements by
11 Ripple cited in your expert report at the time you
12 had decided not to purchase XRP, and I think your
13 testimony was that you did read many of the
14 statements in the report at that time. Is that
15 right?

16 A. I mean --

17 MR. SYLVESTER: Objection; form.

18 Go ahead.

19 THE WITNESS: Sorry.

20 A. -- when you're asking at that time, I
21 think it implies a specific point in time but, you
22 know, over a pretty long period of time, I would say
23 that I never purchased XRP.

24 So at each kind of point on that
25 timeline, there would have been different statements

1 [REDACTED] - 2/16/2022

2 in this report that hadn't been made yet, that had
3 been made yet, public announcements that had been
4 made or not yet.

5 To the extent they had been made, also
6 the market reports would be a good example. They
7 came out once a quarter. So it could have -- it's
8 hard for me to place for a specific point in time
9 exactly which ones I have and haven't read, but it's
10 definitely impossible for me to say that there was a
11 moment in time that I -- that it was the only moment
12 that I didn't buy it, and in exactly which subset of
13 these communications that I'd seen at that point.

14 Q. So sitting here today, giving testimony
15 under oath, which -- can you say that you recall
16 seeing any of the statements quoted in your report
17 prior to your engagement as an expert in this case?

18 A. As somebody who just pays attention to
19 the articles and reports and press releases that are
20 out there in the world about blockchain space, I'm
21 confident that I ran across a lot of the information
22 that was out there about Ripple and XRP at the time.

23 But sitting here now, I can't
24 specifically remember whether I had seen a specific
25 one or not at a particular moment in time.

1 [REDACTED] - 2/16/2022

2 Q. Can you say that you saw any of the
3 statements quoted in your report prior to your
4 engagement as an expert in this case?

5 A. So as I said, I -- I pay close attention
6 to the blockchain space. I look at a lot of news
7 interviews, podcasts, things that are written. But
8 I can't pinpoint for you a specific quote in here
9 that I did or didn't see at a specific point in
10 time. So if I -- I can't do it for a -- on a
11 one-off basis, I can't, you know, collect those and
12 tell you which, if any, I've seen.

13 Q. Okay. So you --

14 (Discussion off the written record.)

15 MR. OPPENHEIMER: Let's go off the
16 record.

17 THE VIDEOGRAPHER: The time is 5:05.
18 We are off the record.

19 (Break.)

20 THE VIDEOGRAPHER: The time is 5:08.
21 We are on the record.

22 Q. Mr. [REDACTED] I'm going to hand you an
23 exhibit that's marked as Exhibit [REDACTED] 6.

24 (Exhibit 6 was marked.)

25 Q. This is the amended rebuttal report that

1 [REDACTED] - 2/16/2022

2 you submitted on November 16th, 2021.

3 MR. SYLVESTER: Thanks.

4 Q. Do you recognize this document?

5 A. Yes, I do.

6 Q. Okay. I'm going to start by pointing to
7 your rebuttal of Professor Osler, and in particular,
8 Paragraphs 15 to 18 of [REDACTED] Exhibit 6.

9 Now, in responding to Professor Osler,
10 you say in Paragraph 16: Professor Osler provides
11 no justification or uses any methodology to explain
12 why she believes ODL is less costly than traditional
13 cross-border payments using fiat currency.

14 In Paragraph 17, you respond to Professor
15 Osler's statement that: ODL can be, and in my
16 opinion, is a viable option for making cross-border
17 payments, even if it is not currently viable.

18 And you say that she: Looks at
19 technology firms, such as Airbnb and Pinterest, but
20 she just as easily could have looked at unprofitable
21 companies like Webvan and MoviePass.

22 And then, in Paragraph 18, you look at
23 her statement that says: I understand that the SEC
24 has argued that ODL is unprofitable or earns only
25 de minimis revenue. Assuming that is true, it

1 [REDACTED] - 2/16/2022

2 provides no information on the firm's ability to
3 compete as a payment service provider using ODL.

4 And you say with respect to that: In a
5 similar manner, Professor Osler does not supply any
6 such information suggesting Ripple was able to
7 provide an attractive value proposition for ODL in
8 order to, quote, compete as a payment service
9 provider, end quote.

10 Do you see those lines of rebuttal?

11 MR. SYLVESTER: Objection. I just
12 want to say, for the record, the first paragraph of
13 17 ends in the word "profitable," not "viable."

14 MR. OPPENHEIMER: Oh, thank you.

15 Q. Do you see those rebuttal points?

16 A. Yes.

17 Q. You don't offer any rebuttals to
18 Professor Osler's opinion outside of Paragraphs 15
19 to 18 of your rebuttal report, do you?

20 A. I think that there is a lot of
21 information throughout this rebuttal report about
22 the cost structure of ODL and the comparisons
23 between the costs of using ODL compared to other
24 payment solutions and, you know, Professor Osler
25 never put forth a specific calculation of estimates

260

1 [REDACTED] - 2/16/2022

2 of the costs of using ODL for particular
3 transactions.

4 Professor Ferrell did that, and I did
5 that. And I think that, you know, if you're asking
6 for other discussion about the viability of ODL, I
7 would point you towards my more in-depth analysis
8 about the cost structure of ODL in terms of its, you
9 know, much higher cost structure for particular
10 transaction sizes and transaction types, compared to
11 the traditional financial space and how the array of
12 different subsidies and incentive payments were
13 required to incentivize market participants to use
14 that service instead of other services that the core
15 product offering was much more cost-effective.

16 Q. Where in your rebuttal report do you
17 offer any rebuttal explanation to show that ODL is
18 not viable as a matter of economic theory, as
19 opposed to the actual costs that have been incurred
20 by previous users?

21 MR. SYLVESTER: Object to form.

22 A. I think I have discussed in several
23 places, I think, the overall mechanics of ODL and
24 how it works and why some of the, you know, design
25 elements of how ODL operates in the world is, you

1 [REDACTED] - 2/16/2022

2 know, structurally more costly than a traditional
3 financial system. And those are separate from the
4 real-world data which calculates specific costs
5 related to doing those transactions.

6 Q. Point me to a paragraph in your rebuttal
7 report where you explain why ODL is not viable as a
8 matter of economic theory?

9 MR. SYLVESTER: Objection; form.

10 Go ahead.

11 A. (Pause.)

12 So in Paragraph 24, I lay out several
13 factors why structural ODL is -- has elements of the
14 product offering that are more costly than some
15 alternatives. And, again, that's separate from
16 doing a specific analysis looking at the actual
17 costs incurred by market participants.

18 And so, as an example in the first part
19 of that, I talk about how the, you know, trade
20 between a fiat currency and XRP incurs an exchange
21 fee, and that to use the ODL product, if we take the
22 example of the most popular payment corridor, which
23 is the United States to Mexico, thinking about going
24 from U.S. dollars to Mexican pesos, describe that,
25 you know, to complete that trade or to -- sorry --

1 [REDACTED] - 2/16/2022

2 to execute that money transfer across the border,
3 using ODL requires two sets of exchange trading
4 fees.

5 Whereas, a traditional payment using the
6 traditional financial system could be executed with
7 a single FOREX transaction between dollars and pesos
8 directly, as opposed to going U.S. dollars to XRP on
9 one exchange, then transferring assets to another
10 exchange, and going from XRP to pesos on the other
11 exchange.

12 In the next example, they are asking
13 about -- I talk about the, you know, exchange rate
14 that you see on a lit exchange, actually on a
15 combination of exchanges.

16 So using that example we were just
17 talking about, you know, if you combine the -- the
18 two trades from a exchange from dollars to XRP on
19 Bitstamp and an exchange from XRP to pesos on [REDACTED]
20 you can think about the combination of those trades
21 as giving you an effective implied exchange rate
22 from dollars to pesos.

23 And it's possible to, you know, think
24 about a comparison between, you know, going directly
25 from dollars to pesos on the iterative bank market,

1 [REDACTED] - 2/16/2022

2 compared to going from dollars to pesos across
3 multiple steps using ODL.

4 So the -- looking at the difference
5 between those two implies an FX spread which has to
6 be considered. Again, that's separate from looking
7 at the actual costs of using those services. It's,
8 you know, looking in the abstract at how those --
9 the mechanics of both types of transfers work, I
10 could make a comparison between those two solutions.

11 And, you know, the third example here is
12 talking about when you actually go to make those
13 trades on an exchange, you might not get the implied
14 exchange rate that we just discussed. You're likely
15 to get an effective exchange rate that's worse than
16 that from the perspective of the user of ODL of the
17 money transmitter.

18 So, again, going with the same example
19 we've been talking about, you could expect to
20 experience slippage on both of those exchanges. The
21 slippage from the initial trade from dollars to XRP
22 has to be combined with the slippage on the second
23 transaction after making a transfer on the XRP
24 Ledger with the XRP asset.

25 So then you add in the slippage from the

1 [REDACTED] - 2/16/2022

2 trade going from XRP to pesos. And the -- the
3 combination of those needs to be added onto the FX
4 spread. That's between kind of the benchmark FX
5 rate and the implied rate.

6 And I think all three of those factors
7 are -- you know, we can discuss those conceptually
8 and theoretically without looking at the actual data
9 that was -- you know, to see what the actual costs
10 were that were incurred by a specific market
11 participant on a specific trade.

12 I have taken that step to also look at
13 the specific cost structure of these transactions
14 that were experienced by market participants, but if
15 you're asking about an example of looking more in
16 the abstract or theoretically about why one might be
17 advantageous versus the other, I think that would be
18 one example.

19 And, you know, I feel like we can look to
20 other parts of the report where sometimes it's
21 looking at theoretical considerations about the
22 differences in the, you know, market structures and
23 the product designs for those solutions.

24 And then, at times, as Professor
25 Ferrell's report outlines, I, you know, specifically

1 [REDACTED] - 2/16/2022

2 looked at the trading data to -- to calculate the --
3 the actual costs incurred by those market
4 participants.

5 I would say, even in those cases where we
6 look at the actual data of the costs from one
7 solution to another solution, despite Professor
8 Ferrell's numbers being, you know, clearly worse
9 than traditional financial payments, and despite my
10 numbers being even -- I believe, the corrected
11 version of those being even higher than Professor
12 Ferrell's numbers, nonetheless, I think both of
13 those sets of calculations that both Professor
14 Ferrell did and I did are artificially low because
15 those numbers incorporate subsidies and incentives
16 that were made by Ripple to incentivize market
17 participants to participate where they otherwise
18 wouldn't have.

19 So, for instance, when a market
20 participant, such as a market maker is involved,
21 providing liquidity where they wouldn't have
22 normally been doing that if not for the incentive
23 structure that was provided by Ripple, certain of
24 those fees would be even wider.

25 And then I think, you know, beyond market

1 [REDACTED] - 2/16/2022
2 makers adding liquidity and people even being there,
3 you know, performing in the first place, there were
4 specific subsidies to reimburse some of the
5 theoretical factors that we just talked about. For
6 instance, there was a slippage pool to reimburse
7 slippage costs that were incurred by market
8 participants.

9 And so that would be an example where we
10 have a theoretical kind of analysis of why one might
11 be worse than the other. Then we have hard data
12 about the actual costs of using one versus the
13 other. And then on top of that we can look to
14 outside incentives that reimburse some of those
15 costs to draw conclusions about directionally how
16 large the costs would have been, you know, over and
17 above that absent, you know, subsidies and efforts
18 by Ripple to bring those market participants into
19 the fold.

20 Q. Are you done your answer?

21 A. Yes.

22 Q. Are you offering an opinion that based on
23 the exchange trading fees, the implied exchange rate
24 or FX spread from these transactions in ODL and
25 slippage that it is impossible for ODL to ever be

1 [REDACTED] - 2/16/2022

2 less expensive than traditional cross-border payment
3 rails as a matter of economic theory?

4 MR. SYLVESTER: Object to form and
5 beyond the scope.

6 A. So the analysis in my report about the
7 specific advantages and disadvantages of one
8 (unintelligible) versus another, as well as the cost
9 structure was focused on the issuance period. So we
10 asked can they ever. I'd have to, you know, redo
11 the analysis given, you know, new data since then,
12 but the data that I had to work with was confined to
13 the issuance period.

14 I certainly haven't seen anything that
15 suggests to me that I would change my opinion as
16 written here, but you're asking about analysis that
17 was sort of outside of the scope of what I was asked
18 to do in the analysis that I performed.

19 Q. So you're not offering a forward-looking
20 opinion as to whether ODL is or is not potentially
21 viable as a matter of economic theory in the future?

22 MR. SYLVESTER: Object to form.

23 A. So there are times in the report where I
24 do look into the future and say, you know, here is
25 the trends of what I'm seeing during the issuance

1 [REDACTED] - 2/16/2022
2 period. And, you know, based on what I'm seeing
3 during the issuance period and based on my, you
4 know, expert analysis of this -- this payment system
5 and how it works, you know, I can draw some
6 conclusions about how I expect this to, you know,
7 develop in the future in terms of the cost
8 structures.

9 And, you know, I can see what the trends
10 and the trajectory of those costs look like. Again,
11 I -- so I have made comments about how I see this
12 developing in the future. I haven't specifically,
13 you know, gone back and redone my analysis with
14 different data, but I haven't seen anything that
15 would change my opinion now, compared to what I've
16 said and laid out in the report.

17 Q. So are you offering an opinion that as a
18 matter of economic theory ODL could never possibly
19 be viable?

20 MR. SYLVESTER: Objection; asked and
21 answered.

22 A. What I've -- offering an opinion on is
23 based on the data during the issuance period to make
24 assessments about the design of the software
25 product, the financial product, the cost structure

1 [REDACTED] - 2/16/2022

2 that was actually experienced on market
3 participants, and looking at the trajectory of those
4 going forward.

5 I certainly didn't consider every
6 possible hypothetical scenario about what this
7 product could become. I looked closely at the
8 product as designed, as it functioned, and drew
9 conclusions about how it operated during the
10 issuance period and also how I anticipated that it
11 operated -- it would continue to operate in the
12 future.

13 I think based on the structural issues
14 that I identified, if the product is more or less,
15 you know, similar to the one that I've analyzed with
16 the same sort of structural problems that I've
17 analyzed, leading to the real world, you know, cost
18 differences that I've looked at, then given that
19 data and that -- my analysis concluded that it was
20 unlikely to change in that regard going forward.

21 Q. It was unlikely to change in that regard.
22 Where did you say that in your report?

23 MR. SYLVESTER: Object to form.

24 A. (Pause.)

25 There are several places where I make

1 [REDACTED] - 2/16/2022

2 statements similar to the one I just made. One of
3 them is Paragraph 39, where I said the trajectory of
4 ODL costs for money transmitters at the end of the
5 issuance period gave no indication that ODL would
6 have an economical value proposition for financial
7 institutions to continue to adopt ODL, absent
8 subsidies provided by Ripple.

9 So there are other examples, but I think
10 that's one example where as I just mentioned, you
11 know, given the trajectory of cost structure that I
12 analyzed during the issuance period, that the basic
13 structural problems I identified with ODL compared
14 to other payment mechanisms, such as traditional
15 financial system or, you know, blockchain transfers
16 using a stable coin, that the significant subsidies
17 that were provided by Ripple to incentivize various
18 market participants to participate in ODL and to
19 reduce the structural cost advantage to those market
20 participants, you know, absent those, that the basic
21 problems I saw would persist into the future.

22 Q. And you extrapolated that trend from the
23 last three months of the issuance period. Is that
24 right?

25 A. Well, as I mentioned, I think there are

1 [REDACTED] - 2/16/2022
2 many places in the report where I talk about the
3 structural cost advantages of many different types
4 of ODL. But the example you just gave is one
5 important one, yes. I think Professor Ferrell used
6 an FX spread for ODL that was -- first of all, there
7 was an error in the calculation. He said that it
8 was the average between September -- I'm sorry,
9 October to December, but that was -- that was
10 incorrect. Using the same dataset I calculated that
11 that was lower than the average value.

12 But I think more importantly, and to the
13 trajectory point that I was just making, Professor
14 Ferrell described the cost structure as going down
15 over time but ignored that the last, you know,
16 four-month period of the issuance period that we
17 were both -- I think we were both looking at, the
18 costs were actually increasing, not decreasing. So
19 that was more a point about the -- directionally the
20 trajectory of, you know, one specific cost
21 disadvantage of the ODL system going in a different
22 direction than -- than I think the other report
23 indicated.

24 Q. You didn't consider actual data from
25 after the issuance period, just extrapolating from

1 [REDACTED] - 2/16/2022

2 those last few months of the issuance period.

3 Right?

4 MR. SYLVESTER: Objection; form, and
5 mischaracterizes his testimony.

6 Go ahead.

7 A. As I mentioned earlier, I did not redo
8 this analysis using the actual cost data. My
9 assignment was to use real world cost data from the
10 issuance period and to make, you know, calculations
11 about, you know, the money transfer for particular
12 scenarios in the real world and what the costs were
13 for traditional financial payment transfer version
14 of that versus ODL.

15 And so I didn't redo that entire analysis
16 with new data that was from after the issuance
17 period. But I haven't specifically seen anything
18 that would lead me to change the opinions I made
19 about the cost structure of ODL compared to other
20 payment solutions since that point.

21 Q. Let's turn back to Paragraph 24, which
22 you pointed to earlier. Subpart 3 mentions
23 slippage, and you talked about that in one of your
24 earlier answers.

25 Are you aware that Ripple has taken out a

1 [REDACTED] - 2/16/2022

2 patent on a computer system to eliminate slippage?

3 A. I'm not aware that Ripple has found a way
4 to eliminate slippage.

5 Q. Would it change your opinion if you
6 learned that Ripple had taken out a patent on a
7 computer system designed to eliminate slippage?

8 A. I would certainly need to analyze the
9 specifics of how that technology worked before I
10 made any conclusions about anything about that.

11 Q. So you don't know one way or the other
12 whether that would affect your opinions?

13 MR. SYLVESTER: Objection.

14 A. I would have to look at what that
15 technology is and what it purports to do, and how it
16 functions in the real world, look at data and
17 results. From that, just hearing that somebody has
18 an approach to reduce costs doesn't change the facts
19 or the analysis that I've done using real world data
20 for this money transfer product.

21 Q. You testified earlier that you had
22 reviewed the transcript of Professor Osler's
23 deposition. When she mentioned the patent in her
24 deposition, did you do any analysis to try to find
25 or evaluate that patent?

1 [REDACTED] - 2/16/2022

2 MR. SYLVESTER: Are you referencing
3 her deposition transcript?

4 Q. I asked the question. The question is --

5 MR. SYLVESTER: Okay. Well, let me
6 place my objection.

7 If you're referencing her deposition
8 transcript, then I'd ask that you show the witness a
9 copy of the deposition transcript and point him to
10 the selection that you're quoting from so that he
11 can see the context and has some understanding about
12 what you're saying.

13 Q. You can answer, if you can.

14 A. I don't remember seeing that portion of
15 the deposition transcript. And I should probably be
16 more specific in saying that I did not read that
17 deposition transcript front-to-back. I've read
18 pieces and portions of that deposition transcript.
19 I don't remember seeing what you're talking about.

20 Q. Is it fair to say you haven't looked to
21 try to find that patent that Ripple holds?

22 MR. SYLVESTER: Object to form.

23 A. By "looked for the patent," have I looked
24 at the -- for the patent office filings and things
25 like that? No, I have not looked through patent

1 [REDACTED] - 2/16/2022

2 office filings for technology from Ripple to
3 eliminate slippage.

4 Q. Okay. Also in Paragraph 24 you have the
5 discussion of the implied exchange rate. And you
6 mentioned in your answer earlier that XRP requires
7 two trades.

8 Isn't it true that for foreign exchange
9 trades that don't start or end in U.S. dollars,
10 there is also two currency exchange trades required?

11 A. That is incorrect.

12 Q. And what's your basis for saying that
13 it's incorrect?

14 A. I have frequently traded FOREX products
15 and I have traded in trading pairs that do not begin
16 or end in U.S. dollars that do not require two
17 different transactions across two different trading
18 pairs.

19 Q. When did you first begin trading FOREX
20 products?

21 A. It probably was in 2002.

22 Q. And how many FOREX trades have you
23 conducted since 2002?

24 A. I can't remember.

25 Q. Do you have an estimate?

1 [REDACTED] - 2/16/2022

2 A. It's many, but I don't have a specific
3 estimate over, you know, 19 years of activity.

4 Q. More than a thousand?

5 A. Sorry?

6 Q. More than a thousand?

7 A. That --

8 MR. SYLVESTER: Objection; form.

9 Go ahead.

10 A. I'm not going to be able to nail down a
11 specific number, but I think it's very likely it's
12 well more than a thousand, yes.

13 Q. And which trading pairs have you traded
14 in that don't involve U.S. dollars?

15 A. Australian dollars and New Zealand
16 dollar.

17 Q. Is that the only one?

18 MR. SYLVESTER: Objection; form.

19 Go ahead.

20 A. I'd have go back and think carefully
21 about every trading pair I ever traded in, but what
22 I can say is that I've traded many different trading
23 pairs. Some of those don't involve U.S. dollars on
24 the front end or the back end so that's -- that's
25 why I would say it's an accurate statement that

1 [REDACTED] - 2/16/2022

2 every trading pair begins or ends in U.S. dollars.

3 Q. Do you know if there is a liquid trading
4 pair between Australian dollars and Philippine
5 pesos?

6 MR. SYLVESTER: Objection; form.

7 A. I haven't looked recently at the
8 liquidity of a trading pair between -- you gave the
9 example of Australian dollars and Philippine pesos.
10 Is that right?

11 Q. (Nods.) So you don't know, sitting here
12 today, whether that is a liquid trading pair?

13 A. For that specific trading pair? I -- I
14 have not traded that trading pair. I've traded
15 Australian dollars against different currencies, but
16 I haven't attempted to go from -- as far as I can
17 remember, specifically from Australian dollars to
18 Philippine pesos.

19 Q. Do you know how much volume ODL has
20 today?

21 MR. SYLVESTER: Objection; form.

22 A. You're asking for daily or monthly volume
23 figures of, like, today, this week, this month? I
24 haven't seen that data.

25 Q. Do you know whether ODL volumes have been

1 [REDACTED] - 2/16/2022

2 upwards of hundreds of millions of dollars
3 equivalent -- U.S. dollars equivalent over the past
4 several quarters?

5 MR. SYLVESTER: Objection; form.

6 A. I haven't looked at the data for ODL
7 volumes recently.

8 Q. Are you offering an opinion that any
9 money transmitter that is using ODL is using an
10 inherently inferior product?

11 MR. SYLVESTER: Objection; form,
12 beyond the scope.

13 A. What I looked at was the structure of ODL
14 during the issuance period and the data provided
15 especially by -- related to MoneyGram during the
16 issuance period. As I mentioned earlier, I think
17 the peak of that activity before a precipitous drop
18 in the volume of ODL transactions, MoneyGram made up
19 something like 95 percent of those transactions and
20 most of that was on the U.S. dollar to Mexican peso
21 corridor. I'm very familiar with the cost structure
22 of those transactions.

23 I've also looked at the many subsidies
24 that MoneyGram and other market participants
25 received for those transactions and that's the data

1 [REDACTED] - 2/16/2022

2 and the analysis I used to conclude that those
3 subsidies were an important piece of MoneyGram's
4 participation.

5 I think that that -- that analysis is
6 also consistent with something we talked about
7 earlier which was that I looked at statements from
8 the MoneyGram CFO who directly said that absent
9 those subsidies, ODL would not be a -- I'm
10 paraphrasing him, but he said something along the
11 lines of absent the significant subsidies from
12 Ripple, ODL would not be a competitive product or a
13 cost-effective product for them which, you know,
14 strongly implied that -- the same conclusion that I
15 drew from looking at the real world data, which was
16 that, you know, absent the volume-based incentives,
17 the slippage pool, the lower spreads due to
18 incentives to market-makers, about all those things,
19 they would have, you know, had lower costs by
20 sticking with a traditional financial system. And I
21 think that's also reflected in just the total
22 volumes that they did so, you know, they had a large
23 business doing cross-border payments and ODL was a
24 relatively small piece of that total -- that total
25 business. Even though MoneyGram was 95 percent of

1 [REDACTED] - 2/16/2022

2 ODL transactions, you know, ODL transactions were
3 only a, you know, relatively small minority of
4 MoneyGram transactions.

5 So I think all those things together led
6 to my conclusions that based on everything I saw
7 that was from data and analysis during the issuance
8 period, they were, in large part, participating in
9 that program due to the significant incentives and
10 subsidies that were in place.

11 Q. Take a look at Page 16 of Exhibit 6,
12 Section 2.6.1 of your rebuttal report. The heading
13 in Section 2.6.1 is: Professor Ferrell's Own
14 Calculations that ODL, without Subsidies, Is
15 Uneconomical for Financial Institutions such as
16 MoneyGram.

17 Do you see that?

18 A. Yes.

19 Q. You aren't offering an opinion that ODL
20 is uneconomical for all financial institutions, are
21 you?

22 MR. SYLVESTER: Objection; form.

23 A. What I analyzed was the product offering
24 of ODL as it existed during the issuance period, as
25 well as the, you know, real world data and, you

1 [REDACTED] - 2/16/2022

2 know, MoneyGram's activity on that system I think is
3 a very good representation of the economics of
4 market participants in general because 95 percent of
5 activity was MoneyGram's.

6 I think if you were to average the cost
7 structure of other market participants, given that I
8 looked specifically at 95 percent of the volume, I
9 think that's a good sample of the total cross-border
10 payments that were made on ODL at that time. So
11 that leads me to conclude that, you know, other
12 financial institutions would have, you know, a
13 similar cost structure.

14 I think if another financial institution
15 had a significantly superior cost structure to
16 MoneyGram, then it stands to reason that they would
17 have participated on ODL in greater numbers and ODL,
18 you know, just to take an example again, you know,
19 May 2020, if another financial institution had a
20 very significant cost advantage in how they ran
21 their business using ODL, it's probably likely that,
22 you know, MoneyGram's total volume would have been
23 significantly less than 95 percent of those
24 transactions.

25 The fact that they comprised such a large

1 [REDACTED] - 2/16/2022

2 portion of those transactions tells me that, you
3 know, whether from the underlying cost structure of
4 the product or from the subsidies, you know, they
5 were more well-positioned to -- to benefit from
6 doing those -- those transactions.

7 And as I analyzed, the vast majority of
8 those benefits came from the subsidies, not the
9 underlying cost structure. And that's, you know,
10 backed up by the CFO's comments that basically said
11 exactly -- and again paraphrasing -- said exactly
12 that.

13 Q. What analysis did you do to determine
14 whether MoneyGram's cost structure made it an ideal
15 customer for ODL as compared to other money
16 transmitters?

17 MR. SYLVESTER: Object to the form.

18 A. Yeah. I think that looking at the
19 dominance of MoneyGram on the ODL system in terms of
20 their share of ODL transactions, it stands to reason
21 that they -- they had a, you know -- they had a
22 reason to make those transactions, that some of
23 their competitors, they might have looked at -- you
24 know, I can't put myself in their shoes, but
25 presumably, they looked at the same product and made

1 [REDACTED] - 2/16/2022

2 a decision not to participate.

3 So I haven't seen real world data from
4 the other, you know, competitors of MoneyGram that
5 weren't participating in ODL. I can just see the
6 real world transactions that took place on ODL with
7 MoneyGram and note that MoneyGram was the vast
8 majority of the transaction activity on ODL.

9 Q. Take a look at Paragraph 33 of your
10 rebuttal report. In Paragraph 33, you opine that,
11 quote, it is not appropriate to use this low
12 transaction size --

13 MR. SYLVESTER: Sorry, Brad, where
14 are you?

15 MR. OPPENHEIMER: At the
16 second-to-last sentence.

17 MR. SYLVESTER: On Page 19?

18 MR. OPPENHEIMER: Yeah, Page 19.

19 MR. SYLVESTER: Okay.

20 Q. "It is not appropriate to use this low
21 transaction size" --

22 Which a few words earlier was
23 approximately \$12,000.

24 -- "for traditional transfers to
25 calculate break-even costs for ODL since MoneyGram

1 [REDACTED] - 2/16/2022

2 would normally have batch transfers in much larger
3 sizes absent ODL?"

4 Do you see that?

5 A. Yes.

6 Q. And in support, you say: According to
7 MoneyGram's CFO, virtually all other money
8 transmitters batch their payments and, thus, even
9 smaller money transmitters would not find ODL to be
10 economically viable relative to the traditional
11 financial system.

12 Do you see that?

13 A. Yes.

14 Q. And you cite the transcript of
15 Mr. Angelilli for it. Right?

16 A. Let me see.

17 Q. Footnote 37.

18 A. Footnote 37. And then there
19 is something -- where is Footnote 37? Yeah, I
20 think -- I think both of those footnotes speak to
21 that point, yeah, generally. Yes, I see that.

22 Q. Okay. I'm going to mark as [REDACTED]
23 Exhibit 7 the transcript of the deposition of
24 Mr. Angelilli.

25 (Exhibit 7 was marked.)

1 [REDACTED] - 2/16/2022

2 Q. Thank you.

3 Footnote 37 accompanies a sentence that
4 says: Virtually all other money transmitters --

5 Well, I'll read the whole thing.

6 -- according to MoneyGram's CFO,
7 virtually all other money transmitters batch their
8 payments?

9 And Footnote 37 cites to Pages 73 and 74
10 of this transcript. Can you tell me where on
11 Pages 73 and 74 of this transcript Mr. Angelilli
12 says that virtually all other money transmitters
13 batch their payments?

14 A. (Pause.)

15 I don't see it here. I think that it's
16 possible this was a mistake in specifically which
17 portion of this testimony was being referenced. I
18 can -- I generally have in my mind the -- the gist
19 of the -- the statements that I was referring to,
20 but I don't think it's this specific page of the
21 deposition.

22 Q. Okay. Are you familiar with the
23 distinct -- or -- withdrawn.

24 What's the difference between FX
25 disadvantage and FX spread?

1 [REDACTED] - 2/16/2022

2 MR. SYLVESTER: Objection;

3 foundation.

4 A. Those -- depending on who you're talking
5 to, those statements can have different meanings.

6 Typically, I think the way FX spread is discussed in
7 the context of Professor Ferrell's report, in my
8 report, FX spread refers to the -- the difference
9 in, you know, the exchange rate from the -- the lit
10 market rate on two exchange transactions through ODL
11 versus the FX spread between the two currencies that
12 would be experienced with the traditional trade such
13 as on the interbank market.

14 So the spread between those two rates
15 would be what's referred to as the FX spread.

16 Whereas, I -- I have to look at a specific place
17 where you're referring to FX's advantage to give the
18 compare and contrast between those, but that's
19 what's generally being referred to when we're
20 talking about FX spread.

21 Q. The FX spread doesn't include exchange
22 fees, does it?

23 A. The way that I've broken out the -- the
24 cost structures here, the FX spread is a separate
25 concept from -- from the trading fees that are

1 [REDACTED] - 2/16/2022

2 experienced on exchange. Yes.

3 So if you look at my -- so either
4 Professor Ferrell's table which is, I think, Table 1
5 and Table 2, if I'm not mistaken, you see different
6 fees here for the exchange fees on Bitstamp and

7 [REDACTED] and you see a separate breakout of FX spread,
8 same thing on Table 2.

9 And I think if you look at summary of my
10 analysis of the cost calculations, the same thing,
11 you see exchange fee for Bitstamp, you see an
12 exchange fee for [REDACTED] and then you see an FX
13 spread separate to that.

14 Q. Take a look at Page 23, Figure 4.

15 Figure 4 is labeled: Average monthly FX spread
16 using ODL in the USD-MXN corridor in 2020.

17 Are you aware that the numbers reflected
18 in that figure actually include the exchange fees?

19 A. I don't believe that's accurate.

20 Q. Take a look at Paragraph 40 of your
21 rebuttal report, Exhibit 6. Near the end of this
22 paragraph on Page 26, it looks like the second --
23 third-to-last sentence, you write, quote, MoneyGram
24 averaged \$73 million in monthly transactions for the
25 U.S. to Mexico payment corridor.

1 [REDACTED] - 2/16/2022

2 And you state that this, quote,

3 Corresponds to exchange fees of 7 basis points for

4 Bitstamp and 26 basis points for [REDACTED]

5 And then you opine that, quote, The total

6 exchange fees should, therefore, be 33 basis points

7 instead of the 10 basis points used in the Ferrell

8 report's higher market liquidity scenario shown in

9 Table 2.

10 Do you see that?

11 MR. SYLVESTER: Objection. For the
12 record you did not read the last three sentences.

13 In the third-to-last sentence you omitted the words
14 "in 2020."

15 MR. OPPENHEIMER: Thanks.

16 Q. Do you see that part of your opinion?

17 A. Yes. In relation to the last thing that
18 we just talked about, the 10 basis points that are
19 use as the exchange fees for Ferrell's report are,
20 alone, higher than the FX spread shown in September
21 of the FX spread on that chart. So it's not
22 possible for the FX spread for that month to include
23 his exchange rate fees.

24 Q. Are you -- you're -- you're critiquing
25 Professor Ferrell in this passage for understating

1 [REDACTED] - 2/16/2022

2 the exchange fees from his analysis. Right?

3 A. What I've generally pointed out on -- in
4 this section is that I looked up the real world
5 exchange fees on the specific exchanges that are
6 involved in this transaction and they're a different
7 number than -- to be clear, there's a special rate
8 on exchanges at times just for particular assets.
9 If those exchange fees are subsidized by some third
10 party.

11 And so the numbers that Ferrell used
12 included subsidies from Ripple to the exchange, you
13 know, direct payments made by Ripple. And my
14 understanding, that's -- that's a direct agreement
15 to specifically lower the exchange fees paid by
16 market participants on that exchange with that
17 particular digital asset.

18 And the point I'm making here is that if
19 you want to look at the underlying cost structure of
20 the ODL product that the appropriate number to use
21 is the exchanges -- exchange fees across their
22 products, that'd be an unsubsidized number.

23 So I'm comparing the unsubsidized
24 exchange fees to make this calculation, whereas
25 Professor Ferrell is using the subsidized --

1 [REDACTED] - 2/16/2022

2 subsidized fees.

3 Q. 26 basis points isn't actually the
4 unsubsidized fee that would apply on [REDACTED] is it?

5 MR. SYLVESTER: Objection; form.

6 Go ahead.

7 A. So if a user logs on to a [REDACTED] account,
8 when this screenshot in Figure 6 was taken, and they
9 trade with a digital -- they traded a digital asset
10 that was not specifically subsidized to have a lower
11 number, they just used the exchanges, you know,
12 exchange rate to trade their, you know, default
13 value for digit assets, that number is accurate.

14 Q. You -- I'm sorry.

15 A. I think --

16 Q. Go ahead?

17 A. Again, I think I recognize that for
18 specific assets on specific exchanges, the exchange
19 rate could be lower. But, you know, the point I'm
20 making is that some of those change rates on
21 specific assets were lower not because the -- it was
22 cheaper for the exchange to provide that service.
23 They were lower because they had specifically been
24 paid money from a third party to subsidize that
25 activity of trading of that asset. And I think this

1 [REDACTED] - 2/16/2022

2 is -- this is exactly what happened with [REDACTED] and
3 XRP.

4 So I'm not disputing that people might
5 have experienced that rate in the real world, but
6 I've recognized that difference and tried to show
7 that I'm calculating an unsubsidized, you know, cost
8 calculation for using ODL. To the extent that I can
9 unwind different subsidies and sometimes those are
10 baked in where I can't unwind those, in some cases I
11 can. This is an example that I can unwind the
12 effect of the subsidy on the cost structure from
13 what the underlying cost would be to make that
14 trade, you know, absent the subsidies.

15 Q. You got the 26 basis points by looking at
16 the table you included in Figure 6 of your report
17 and going down to where the number -- the volume
18 would be greater than 50 million. Is that right?

19 MR. SYLVESTER: Object to form.

20 Q. Based on the \$73 million volumes you
21 describe in Paragraph 40?

22 MR. SYLVESTER: Object to form.

23 Go ahead.

24 A. So based on MoneyGram's average
25 transaction of OEMs in 2020 of 73 million, you'd

1 [REDACTED] - 2/16/2022

2 look down the list of Bitso's transaction fees on
3 the taker column because MoneyGram would be, in any
4 given transaction, likely to be the taker rather
5 than the maker in that transaction, and look for the
6 value that's greater than \$50 million of monthly
7 transaction volume and less than 150 million.

8 Q. But the volume numbers are given in
9 Mexican pesos, aren't they?

10 MR. SYLVESTER: Object to form.

11 A. It does say transactions are in Mexican
12 pesos. Yes.

13 Q. If you convert to Mexican pesos you'd end
14 up with a lower fee than the one you described in
15 your report. Right?

16 A. Yes.

17 Q. Take a look at Paragraph 20 -- I'm sorry,
18 Paragraph 92 of your rebuttal report. In
19 Paragraph 92 you're responding to the expert report
20 filed by Professor Yadav.

21 MR. SYLVESTER: Brad, if we're going
22 to move on to a different section of his rebuttal
23 report is now a good time for a break?

24 MR. OPPENHEIMER: Sure. Let's take a
25 break.

1 [REDACTED] - 2/16/2022

2 THE VIDEOGRAPHER: The time is 6:02.

3 We're off the record.

4 (Break.)

5 THE VIDEOGRAPHER: The time is 6:18.

6 We're on the record.

7 Q. You testified earlier that you had not
8 disabled TweetDelete after being engaged as an
9 expert in this case. Did you ever enable
10 TweetDelete after you had been engaged as an expert
11 in this case?

12 A. I can't remember when TweetDelete came on
13 and off. I just know that generally for the whole
14 six-year period I typically had TweetDelete enabled.

15 Q. I want to show you an exhibit that we'll
16 mark as [REDACTED] Exhibit 8.

17 (Exhibit 8 was marked.)

18 Q. [REDACTED] Exhibit 8 is a web archive capture
19 of the [REDACTED] Twitter page from October 15th,
20 2021. I want to look down --

21 (Discussion off the written record.)

22 Q. And if you look at the tweets shown on
23 this page, they go back at least to September 7th.
24 Do you see that?

25 A. Yes, I see that.

1 [REDACTED] - 2/16/2022

2 Q. Does that suggest to you that TweetDelete
3 was not enabled as of October 15th?

4 A. That does not suggest that to me, no.

5 (Discussion off the written record.)

6 Q. Why do you think

7 TweetDelete -- withdrawn.

8 Is it -- do you think that TweetDelete
9 was enabled as of October 15th, 2021?

10 A. I think so, but I'm not sure about a
11 specific point in time.

12 Q. If TweetDelete was enabled as of
13 October 15th, 2021, would you expect to see tweets
14 going back to September 7th as of that date?

15 A. I'm not sure. It depends on the amount
16 of time that TweetDelete would have been set in
17 terms of how many days back it went.

18 Q. Why did you change your account to
19 protected on or after October 15th, 2021?

20 MR. SYLVESTER: Objection; asked and
21 answered.

22 A. So as I said earlier, I think the first
23 time I protected my account was probably six years
24 ago in January of 2016. There have probably been
25 times since then that it's been toggled back and

1 [REDACTED] - 2/16/2022

2 forth, but that certainly wasn't the first time that
3 I protected the account.

4 Q. Take a look at the tweet from
5 September 28th. It's the first one on this list.
6 This appears to be in response to somebody who
7 writes, quote, Musk, I don't think crypto is
8 the second -- is Second Coming of the Messiah.

9 And the response says: Holy shit. That
10 means it's the first one.

11 What did you mean by that?

12 A. It was --

13 MR. SYLVESTER: Object to form.

14 Go ahead.

15 A. It was a joke about -- you know, about
16 Musk's comment.

17 Q. And what did you mean by that joke?

18 A. I think -- I think it's self-explanatory,
19 but Musk is saying that it's not the Second Coming
20 of the Messiah, so the joke would be that the
21 logical conclusion would be that he's saying it's
22 the first, instead of the second.

23 Q. If you look at the second, third, fourth,
24 the fifth -- sixth tweet down the page, this is one
25 dated September 7th, and it says: If Brian

1 [REDACTED] - 2/16/2022

2 Armstrong actually doesn't understand how lending
3 products can be securities...hoo, boy.

4 What did you mean by that?

5 A. This is in response to a tweet by Brian
6 Armstrong that says: How can lending be a security?

7 I think that, in reality, there are
8 plenty of lending products that are securities.

9 Q. What analysis have you done to figure out
10 which lending products are securities?

11 MR. SYLVESTER: Objection;
12 foundation.

13 A. I just know that in the real world, there
14 are financial products that have registered as
15 securities or that, you know, speak about themselves
16 as being securities in the real world.

17 Q. Do you consider the possibility that a
18 financial product may qualify as a security when you
19 make investment decisions on behalf of [REDACTED]

20 [REDACTED]

21 A. Sorry. Say it again.

22 Q. Do you consider the possibility that a
23 financial product may qualify as a security when you
24 make investment decisions on behalf of [REDACTED]

25 [REDACTED]

1 [REDACTED] - 2/16/2022

2 MR. SYLVESTER: Object to form.

3 A. When I make investment decisions on
4 behalf of [REDACTED] I consider a variety of
5 risk factors. Some of those risk factors are
6 regulatory risks, so I do think about whether a
7 particular asset is more or less likely to be, you
8 know, considered a security.

9 Q. Have you ever tweeted about XRP?

10 A. I don't remember anything specific like
11 that.

12 Q. Do you remember one way or the other
13 whether you have or have not?

14 MR. SYLVESTER: Objection; asked and
15 answered.

16 A. I don't remember.

17 Q. You testified earlier a bit about an NDA
18 that you have with [REDACTED] Are you
19 willing to ask [REDACTED] to release you from
20 that NDA?

21 A. I can consider having that discussion.

22 Q. Have you attempted to have that
23 discussion in connection with your offering an
24 expert report in this case?

25 A. No.

1 [REDACTED] - 2/16/2022

2 MR. SYLVESTER: Object to form.

3 Just got to hang on for the

4 objection.

5 THE WITNESS: Sorry.

6 Q. Take a look at Paragraph 95 of your
7 rebuttal report, which is responding to Professor
8 Yadav, in Paragraph 95, you say: The four indicia
9 used by Professor Yadav to determine the geographic
10 location of digital asset trading platforms
11 critically omit a key factor - the location of a
12 digital asset platform's servers.

13 Is it your opinion that servers are an
14 important factor in determining where offers on an
15 exchange become final and binding?

16 MR. SYLVESTER: Objection; form,
17 beyond the scope.

18 A. I think that the motivation for
19 discussing that factor here was that there were
20 points in Professor Yadav's report that did discuss
21 the location of the digital asset platform servers,
22 and then other parts of the report where those were
23 left out.

24 I think I say here Professor Yadav
25 mentions the digital asset platform servers as a

1 [REDACTED] - 2/16/2022

2 potential indicia of location and gives weight to
3 this indicium by listing it alongside other indicia
4 that were actually employed in determining the
5 location of a digital asset platform.

6 So there are parts of the report where
7 she talks about -- where the -- where Professor
8 Yadav speaks about location of servers, and there
9 are other parts where that is kind of left out of
10 the analysis.

11 Q. I didn't ask you about your motivation.
12 My question was, is it your opinion that servers are
13 an important factor in determining where offers on
14 an exchange become final and binding?

15 A. I think, first of all, the opinion I put
16 forth was that the word "offer" is broader than just
17 where a trade is matched on a server -- or sorry --
18 on an exchange. There is a broader offering process
19 at play there that incorporates, you know,
20 facilitating those transactions with explaining to
21 investors where they can find, you know, platforms
22 and fora that include that particular digital asset.

23 It includes advertising to people that
24 they should buy it, and it includes all the steps
25 along the way of entering an order, and having that

1 [REDACTED] - 2/16/2022

2 order be matched and completed.

3 So when you're asking about if it's an
4 important factor, I'd said there are a lot of
5 different factors at play. The location of the
6 participants, whether that's individuals, companies,
7 and also servers, the location of all those are
8 important to that process.

9 Q. Suppose an exchange had servers in ten
10 different countries. Is it your opinion that that
11 exchange would be located in all ten different
12 countries?

13 A. I think that a company that has many
14 other indicators that they're in a particular
15 country, that that company doesn't become a --
16 classified as existing in many different countries
17 at once if they just, you know, move some of their
18 code to, for instance, a cloud server in several
19 countries.

20 So I don't think that a company can
21 suddenly -- you can suddenly ignore the other
22 factors that are involved there. I think all of the
23 factors have to come into play.

24 Q. Suppose the Tokyo Stock Exchange places a
25 server in New York. Is it your opinion that this

1 [REDACTED] - 2/16/2022

2 means some trades on the Tokyo Stock Exchange now
3 occur in the United States?

4 A. I'm sorry. Read the hypothetical again.

5 Q. Suppose the Tokyo Stock Exchange places a
6 server in New York. Is it your opinion that that
7 means some trades on the Tokyo Stock Exchange now
8 occur in the United States?

9 A. I'd have to look at the -- all the
10 details around that stock exchange, their business,
11 and how they operate to make that determination. I
12 think, sitting right here, just telling me that
13 there is one factor that's involved and that's
14 changed, I can't really say how that would play out
15 in my analysis.

16 Q. What details would you need about the
17 stock exchange, their business, and how they
18 operate?

19 A. I would need to look at a variety of
20 factors to understand -- to understand that,
21 including, you know, where the company is located,
22 you know, where they have advertised to customers,
23 the languages that they've used to serve those
24 customers, the platforms and the type of advertising
25 campaigns they've used to reach customers. And

1 [REDACTED] - 2/16/2022

2 there are other factors involved as well. That's
3 just an example.

4 Q. Any other factors you would need to
5 understand?

6 A. I -- I'd first want to, you know, look at
7 the specific question in front of me because, I
8 mean, I think you're talking about a type of
9 platform that's inherently different than a digital
10 asset trading platform in this hypothetical. And
11 there are similarities and differences but, you
12 know, I think I have mentioned some of the relevant
13 factors that are involved.

14 Q. Are there other relevant factors you
15 would need to consider?

16 A. Yes, there are.

17 Q. What other factors?

18 A. Like I said, sitting here right now, I
19 can't think of all of them but, you know, as an
20 example, if -- if an exchange had a lit exchange
21 that was based in one country and, you know, made --
22 facilitated direct sales in another country or
23 over-the-counter sales somewhere else, that could be
24 an important piece of information.

25 Yeah, basically, you know, there might be

1 [REDACTED] - 2/16/2022

2 other venues or areas where the trades took place,
3 rather than just that single server that you've
4 mentioned, you know, could hypothetically move from
5 Point A to Point B.

6 Q. Any other factors you'd need to consider?

7 A. Along with the process that's kind of
8 laid out in my report for making those decisions, I
9 can't specifically think of how a traditional
10 financial exchange would differ.

11 Q. Did you consider all of those factors
12 with respect to determining where [REDACTED] is
13 located?

14 MR. SYLVESTER: Objection; form.

15 A. No, I did not.

16 Q. Did you consider all of those factors
17 with respect to where Bitfinex is reported -- is
18 located?

19 MR. SYLVESTER: Objection; form.

20 A. You know, the work I've done to look at a
21 specific exchange, to the extent that I looked at
22 that, is discussed in my report. I mean, I kind of
23 walk through some of the -- the reasons there that I
24 think -- the factors that were not present in
25 Professor Yadav's report should be included and some

1 [REDACTED] - 2/16/2022

2 of the ways that the factors applied by Professor
3 Yadav were applied inconsistently.

4 Q. Mr. [REDACTED] it's a question --

5 MR. SYLVESTER: Let him finish the
6 question, please.

7 Q. Go ahead.

8 A. But sitting here now, if you're asking me
9 to do a new piece of analysis, I would need to study
10 that and --

11 Q. I --

12 A. -- and, you know, apply the specifics of
13 that type of exchange which is used as a digital
14 asset exchange, and I need to think through that.

15 Q. I'm not asking you to do a new analysis.
16 I'm not asking you to walk through other things you
17 discuss in your report. My question is, all of
18 those factors that you just listed in response to my
19 question, did you consider all of those factors with
20 respect to Bitfinex?

21 A. (Pause.)

22 I'm trying to refresh my memory if there
23 was anything specific to Bitfinex in here, but
24 beyond what I've just said, but I don't think there
25 is.

1 [REDACTED] - 2/16/2022

2 MR. SYLVESTER: Counsel, is there a
3 specific portion of the report you want to direct
4 him to, to answer your question?

5 MR. OPPENHEIMER: No. I think he's
6 right. I don't think there is.

7 Q. You didn't consider each of those factors
8 that you just identified in response to my questions
9 as to any of the roughly two dozen exchanges that
10 Professor Yadav listed in her report, did you?

11 MR. SYLVESTER: Objection; form.

12 A. I'm sorry. Can you repeat that?

13 Q. You didn't consider each of those factors
14 you just identified in response to my question as to
15 any of the roughly two dozen exchanges that
16 Professor Yadav identified in her report, did you?

17 MR. SYLVESTER: Same objection.

18 A. The analysis I did related to the -- to
19 Professor Yadav's analysis is laid out in the
20 rebuttal, and you can see the steps I took to -- to
21 look at those here, and I think -- you know, you've
22 asked a hypothetical about how I would analyze a
23 different kind of platform. I've given some
24 additional factors that I might consider and -- but,
25 you know, the factors that I did consider and the

1 [REDACTED] - 2/16/2022

2 analysis I did do is laid out in the report.

3 Q. What did you do to prepare for your
4 deposition today?

5 MR. SYLVESTER: Object to form.

6 Go ahead.

7 A. I've read through my own report. I've
8 read through the reports that I rebutted. And I've
9 just generally refreshed myself on the -- the
10 reports that I wrote and the analysis that I did.

11 Q. Did you meet with the SEC's counsel at
12 all?

13 A. Yes.

14 Q. How many times?

15 A. I think four.

16 Q. And approximately how many hours total
17 did you spend in those four meetings?

18 A. I can't remember exactly.

19 Q. Do you have an estimate?

20 A. Probably something like 20 hours. Like
21 four hours each.

22 Q. Who was present at the first meeting?

23 A. Mark Sylvester. And I can't remember
24 specifically for each meeting, but generally those
25 meetings included Daphna Waxman and Mark Sylvester.

1 [REDACTED] - 2/16/2022

2 Q. Anyone else?

3 A. I don't think so.

4 Q. Was there anyone outside the SEC present
5 at those meetings?

6 A. I was present at those meetings.

7 Q. In addition to you, was there anyone
8 outside the SEC who was present at those meetings?

9 A. I don't think so.

10 Q. Okay. During those meetings were you
11 shown any documents that refreshed your recollection
12 as to the issues in this case?

13 A. I was shown the documents that I just
14 mentioned that I've, you know, read again more
15 recently, including my own -- primarily my own
16 expert reports.

17 Q. Any documents other than the expert
18 reports that refreshed your recollection?

19 MR. SYLVESTER: Objection. I'm going
20 to instruct you not to answer that question to the
21 extent it reveals work product. If you can answer
22 that question without identifying any documents that
23 were selected by the SEC to show you during your
24 prep sessions, you can answer it.

25 MR. OPPENHEIMER: Wait, wait, wait.

1 [REDACTED] - 2/16/2022

2 If it refreshed his recollection, that's not work
3 product. That's something that refreshes a witness'
4 recollection and that's discoverable. I'm not
5 asking for everything you showed him. I asked were
6 there any documents, other than the expert reports,
7 that refreshed his recollection.

8 MR. SYLVESTER: Okay. I'm fine with
9 that. You can answer that.

10 A. Sitting here right now, I can't remember
11 specific documents that I looked at.

12 Q. Okay. Did anyone provide comments on any
13 drafts of your expert report in this case?

14 A. Yes.

15 Q. Who?

16 A. [REDACTED] [REDACTED], [REDACTED]
17 [REDACTED] (phonetic), [REDACTED], Mark Sylvester,
18 Daphna Waxman. I can't remember who else.

19 Q. Are all of those folks that you just
20 listed associated with either the SEC or Integra?

21 A. Yes.

22 Q. Is it -- would that be the same set as to
23 your rebuttal report?

24 MR. SYLVESTER: Objection. Sorry. I
25 thought you were answering both reports together,